

**Defendants.**

**No. 0:08-cv-6324 PAM AJB**

## Declaration Of Joshua Rabinovitz

I, Joshua Rabinovitz, hereby state:

1. I am a lawyer at the law firm of Kirkland & Ellis LLP, and have been since 2005. I am one of the lawyers representing the defendants in this case and have been one of the primary lawyers interacting with the plaintiffs' lawyers during discovery.

## The Plaintiffs' Designation Of The "Confidential" Witnesses

2. On October 29, 2010, the parties had a meet and confer telephone conference regarding discovery requests. On the call representing the defendants were Sallie Smylie, Andrew Bautista, and me. On the call representing the plaintiffs were, at least, Ramzi Abadou, Jeff Almeida, Salvatore Graziano, James Hughes, and Jennifer Joost.

3. On the call, I asked the plaintiffs' lawyers why they had designated their interrogatory response disclosing the identities of the "confidential witnesses" as highly confidential under the Court's protective order. One of the plaintiffs' lawyers—I believe it was Mr. Graziano—stated that the confidentiality designation was because the witnesses were "under threat of being blackballed." I asked whether the plaintiffs had asked each confidential witness whether they wanted their identity kept confidential and the plaintiffs' lawyer responded that they "spoke to each of them and each is concerned about being blackballed" and requested confidentiality.

#### **Meet and Confer Telephone Conferences With The Plaintiffs' Lawyers**

4. Since October 2010, the parties have had 13 meet and confer telephone conferences. The following chart shows the number of defense lawyers on each call and the minimum number of plaintiffs' lawyers on each call. The reason it is only a minimum number for plaintiffs' lawyers is that often they do not announce everyone on the call, and I only realize someone else is on the call if they speak.

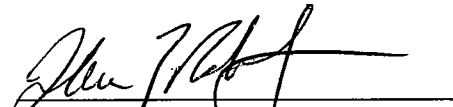
<u>Date</u>	<u>Number of Plaintiff lawyers</u>	<u>Number of Defense lawyers</u>
8/23/2010	7	2
10/18/2010	7	4
10/19/2010	7	3
10/29/2010	6	3
11/9/2010	4	3

12/29/2010	5	2
2/23/2011	8	2
4/5/2011	7	3
4/13/2011	7	2
5/31/2011	2	2
6/2/2011	4	2
6/6/2011	11	2
6/10/2011	1	1

These figures average to 5.85 lawyers per call for the plaintiffs and 2.38 lawyers per call for the defendants.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

Dated: 7/15/2011

  
Joshua Rabinovitz